

AUGUST F. PLACHTA

IBLA 84-337

Decided June 18, 1985

Appeal from a decision of the Billings Office, Bureau of Land Management, declaring four mining claims abandoned and void for failure to timely record the notices of location. M MC 107139 through M MC 107142.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

BLM properly declares a mining claim abandoned and void for failure to timely file a certificate of location as required by 43 CFR 3833.1-2 even though the failure to timely file the certificate was attributed to the county's slow return of the document.

APPEARANCES: August F. Plachta, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

August F. Plachta appeals the January 11, 1984, decision of the Billings Office, Bureau of Land Management (BLM), declaring four mining claims abandoned and void for failure to timely file the certificates of location. The claims, the Golden Meadow, the Anniversary Gold, Truman's Treasure, and Truman's Treasure #2, M MC 107139 through 107142, were located September 14, 1983. The certificates of location were received by BLM on December 15, 1983. The claims were conclusively deemed abandoned and void because appellant failed to comply with section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982), which provides that an owner of an unpatented mining claim shall, within 90 days after the date of location of such claim, file with BLM "a copy of the official record of the notice of location or certificate of location." Failure to file such an instrument shall be deemed conclusively to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982). See United States v. Locke, 105 S. Ct. 1785 (1985). See also 43 CFR 3833.1-2(a).

Plachta states that the location notices were filed with the county within the time allowed, but, because the county did not return the documents as quickly as usual, he did not mail the documents to BLM until 88 days after location. The documents were not received by BLM until 92 days after location.

[1] Nothing in the applicable statute or regulations requires that a mining claimant file copies of a notice or certificate of location first under state law and then with BLM. In fact, although the regulations do not mandate filing a certificate of location with BLM before filing under state law, the regulations expressly contemplate that possibility. 43 CFR 3833.1-2 requires the locator file with BLM a copy of the certificate or notice of location of the claim that "was or will be filed under state law." (Emphasis added.) Since only a copy of the official record must be filed with BLM, the claimant may also file copies of the certificate of location under state law after, or simultaneously with, filing with BLM.

Since appellant's certificates of location were filed two days late he requests the Board permit his late filing under 43 CFR 4.401(a) which he says "allows a grace period for filing of up to 10 days." That regulation provides:

Whenever a document is required under this subpart to be filed within a certain time and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it was determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. [Emphasis added.]

The subpart referenced by this regulation is Subpart E of Part 4, 43 CFR -- Special Rules Applicable to Public Land Hearings and Appeals. This regulation does not provide a grace period for late filing of certificates of location since such documents are outside its scope. Rather, this regulation governs the late filing of documents associated with public land hearings and appeals, e.g., notices of appeal, statements of reasons, etc. See 43 CFR 4.412. Nor can the analogous regulation applicable to BLM, 43 CFR 1821.2-2(g), benefit appellant because it provides that a document may not be considered as timely filed by the authorized officer "where the law does not permit him to do so" and 43 U.S.C. § 1744(c) (1982) does not permit him to do so.

The owner of the unpatented mining claim bears the responsibility for complying with the recordation requirements of FLPMA. This Board has no authority to excuse lack of compliance, to extend the time for compliance, or to afford relief from the statutory consequence. Charlene and Robert Schilling, 87 IBLA 52 (1985). Because the certificates of location for these four claims were filed more than 90 days after they were located, BLM properly declared the claims void. 43 CFR 3822.4.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Gail M. Frazier Bruce R. Harris
Administrative Judge

Administrative Judge.

